

ILENE A. PEARSON

IBLA 93-227

Decided March 18, 1996

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mill site claim null and void ab initio. NMC 461127.

Affirmed.

1. Mining Claims: Lands Subject to—Public Lands: Classification—Small Tract Act: Classification—Withdrawals and Reservations: Revocation and Restoration

Lands classified for disposal under the Small Tract Act were generally closed to location under the mining laws. Where implementation of an order terminating this classification was enjoined by a Federal court order, effectively reinstating the classification, a mill site claim located on the land at a time when it was subject to the injunction is properly held null and void ab initio.

APPEARANCES: Ilene A. Pearson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring appellant's unpatented mill site identified as Ilene P. (NMC 461127), located on January 27, 1988, null and void ab initio. The basis for the BLM decision was that the land on which the claim is located was classified on October 2, 1953, for disposal under the Small Tract Act, as amended, 43 U.S.C. §§ 682a–682e (1970) (repealed October 21, 1976, Federal Land Policy and Management Act of 1976, P.L. 94-579, § 702, 90 Stat. 2787 (1976)). Acknowledging that the classification was terminated on October 23, 1981, BLM found that the classification and withdrawal of the lands was effectively reinstated by a Federal District Court injunction on February 15, 1986, and, hence, the land was not open to location under the mining laws at the time the mill site was located.

Appellant contends on appeal that the injunction was essentially temporary in nature, designed to preserve the status quo pending resolution of the litigation, and should not cause the voiding of her claim. Further, appellant contends that she located her claim without knowledge of the injunction and stands to be adversely affected by loss of improvements constructed on the claim.

Except where otherwise provided in the classification or any modification thereof, classification of public lands for disposition under the Small Tract Act segregated the affected land from all other forms of appropriation under the public land laws, including locations under the mining laws. Chester C. Reddeman, 101 IBLA 33, 34 (1988); Thom Seal, 92 IBLA 9 (1986). In Reddeman we noted that segregative effect of the classification arose as a result of Departmental promulgation of 43 CFR 257.3(b) (20 FR 366 (Jan. 15, 1955)), which provided that land classified under the Small Tract Act "will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof." Chester C. Reddeman, *supra* at 34 n.3.

[1] It appears from the record that this classification was terminated on October 23, 1981. However, prior to location of appellant's claim, a lawsuit was filed in the Federal District Court challenging the Department's termination of classifications and revocation of withdrawals which had taken place after January 1, 1981, as inconsistent with the Department's statutory obligations. See National Wildlife Federation v. Burford, 676 F. Supp. 271 (D.D.C.), *aff'd*, 835 F.2d 305 (D.C. Cir. 1987). A modified preliminary injunction was issued on February 10, 1986, effective February 18, 1986. This injunction was published in the Federal Register. 51 FR 5809, 5810 (Feb. 18, 1986). Under the terms of the preliminary injunction, the termination of classifications and revocation or modification of withdrawals occurring since January 1, 1981, were suspended until further action of the court. 51 FR at 5810 (Feb. 18, 1986). ^{1/} In Chester C. Reddeman, *supra* at 37, we held that the injunction had the effect of reinstating the prior classification under which the land was closed to location of mining claims and, hence, mining claims located after the date of the injunction were properly held to be null and void ab initio. Further, the Board has held that mining claims located

^{1/} Subsequently, the district court ruled in a decision dated Nov. 4, 1988, that National Wildlife Federation did not have the requisite standing to maintain the action and, accordingly, dismissed the suit, vacated the preliminary injunction, and denied the motion for a permanent injunction. See National Wildlife Federation v. Burford, 699 F. Supp. 327 (D.D.C.). On appeal, this decision was reversed by the Court of Appeals. National Wildlife Federation v. Burford, 878 F.2d 422 (D.C. Cir. 1989). However, the Supreme Court granted a writ of certiorari and, on June 27, 1990, reversed the decision of the Court of Appeals. See Lujan v. National Wildlife Federation, 110 S. Ct. 3177. Thus, the preliminary injunction in issue herein effectively terminated on Nov. 4, 1988.

on public lands at a time when they were withdrawn from location under the mining laws pursuant to the terms of the injunction are null and void ab initio, notwithstanding the fact the injunction was subsequently terminated November 4, 1988. Shama Minerals, 119 IBLA 152, 154 (1991). Thus, appellant's mill site claim, located on January 27, 1988, during the time the injunction was effective, is properly held null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge

